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OCT 24 2008
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October 23, 2008

VIA FEDERAL EXPRESSHearing Docket
FAA, AGC-400, Room 2014
600 Independence Avenue, SW
Washington, D.C. 20591

CPD8SD0020 / 2008-1047

DEPT. OF TRANSPORTATION
DOCKETS

OCT 30 PM 4:54

Re: In the Matter of New England Truck Master, Inc.
FAA Case No. 2008SO700136

Enclosed please find Respondent's original Answer and Affirmative Defenses, and an additional copy of same, in the above-referenced administrative proceeding.

Respondent, New England Truck Master, Inc., respectfully requests that the hearing in this matter be held at the New England Regional Office of the Federal Aviation Administration located at 12 New England Executive Park, Burlington, MA 01803-5299. A hearing in the Atlanta area will pose an undue financial hardship on the Respondent.

Please address all communications relating to the above-referenced Case Number to the undersigned counsel for New England Truck Master, Inc. at:

Hinckley Allen & Snyder, LLP
185 Asylum Street
CityPlace I, 35th Floor
Hartford, CT 06103
Tel: (860) 725-6233
Fax: (860) 278-3802

Very truly yours,



Michael C. Sorensen

Encl.

cc: Andrea Michelle Harper, Esq. (Attorney for the FAA), via Certified Mail & Facsimile
Christine M. Miller, Esq.

RECEIVED

**UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARING
FEDERAL AVIATION ADMINISTRATION**

OCT 24 2008**HEARING DOCKET**

FEDERAL AVIATION ADMINISTRATION,	:	
	:	
Complainant,	:	
	:	
vs.	:	FAA Docket No.
	:	
NEW ENGLAND TRUCK MASTER, INC.,	:	2008SO700136
	:	
Respondent.	:	

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to the provisions of 14 C.F.R. §13.209, the Respondent, New England Truck Master, Inc. ("NETM"), hereby files its Answer and Affirmative Defenses to the Complaint filed by Complainant, the Federal Aviation Administration ("FAA"), dated September 19, 2008.

I.

1. The Respondent denies that it was advised on August 14, 2008 by way of a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$29,100. The remaining allegations contained in Paragraph One are admitted.

II.

2. Denied.

3. Respondent denies that the "shipment" referred to may be characterized as "knowingly" offered, as set forth in Paragraph Two. The remaining allegations contained in Paragraph Three are admitted.

4.-5. Respondent lacks sufficient information or belief to admit or deny the allegations contained in Paragraphs Four through Five, and therefore leaves Complainant to its proof.

6. Admitted.

7. Respondent lacks sufficient information or belief as to the applicability of the cited section of the Code of Federal Regulations to the material shipped for the

purpose of admitting or denying the allegations contained in Paragraph Seven, and therefore leaves Complainant to its proof.

8. Respondent lacks sufficient information or belief as to the applicability of the cited section of the Code of Federal Regulations to the material shipped for the purpose of admitting or denying the allegations contained in Paragraph Eight, and therefore leaves Complainant to its proof.

9.-14. Respondent lacks sufficient information or belief as to whether the material it shipped is "hazardous material" as that term is used in the applicable regulations, and therefore leaves Complainant to its proof. The remaining allegations contained in Paragraph Nine through Fourteen are admitted.

15. Respondent lacks sufficient information or belief as to whether the material it shipped is "hazardous material" as that term is used in the applicable regulations, and therefore leaves Complainant to its proof. Respondent denies that it failed to package the material in a manner reasonably sufficient to prevent the release of the material into the environment.

16. Respondent lacks sufficient information or belief as to whether the material it shipped is "hazardous material" as that term is used in the applicable regulations, and therefore leaves Complainant to its proof. Respondent denies that it failed to pack, secure and cushion the package to prevent breakage or leakage.

17. Respondent lacks sufficient information or belief as to whether the material it shipped is "hazardous material" as that term is used in the applicable regulations, and therefore leaves Complainant to its proof. Respondent lacks sufficient information or belief as to the remaining allegations contained in Paragraph Seventeen, and therefore leaves Complainant to its proof.

18. The allegations contained in Paragraph Eighteen are denied in that NETM denies knowingly violating any of the cited regulations or knowingly handling "hazardous materials" as that term is used in the applicable regulations and statutes. Respondent lacks sufficient information or belief as to the remaining allegations contained in Paragraph Eighteen, and therefore leaves Complainant to its proof.

19. Denied.

20. Denied.

AFFIRMATIVE DEFENSES

1. The FAA's Complaint fails to state a claim upon which relief can be granted in that it fails to allege any circumstances under which the Respondent knew or should have known that the materials shipped by it

were in any way materials whose transportation was regulated by any federal agency.

2. The proposed Civil Penalty of \$29,100 is excessive in light of the circumstances giving rise to the alleged regulatory violations.
3. The proposed Civil Penalty of \$29,100 is arbitrary and capricious in light of the circumstances giving rise to the alleged regulatory violations and the recommendation of the figure to the Hearing Officer.
4. NETM did not knowingly violate any of the regulations cited by the FAA in its Complaint, which would support a claim for civil liability pursuant to the provisions of 49 U.S.C. §5123(a).
5. NETM reserves the right to assert additional Affirmative Defenses that may be available to it during the proceedings before this Agency.

WHEREFORE, New England Truck Master, Inc. requests that the Administrative Law Judge deny the FAA's request for an order assessing a Civil Penalty of \$29,100 against NETM, and grant whatever additional relief to NETM that the Administrative Law Judge deems fair and just.

Respondent further requests that the Hearing in this matter be held at the New England Regional Office of the Federal Aviation Administration located at 12 New England Executive Park, Burlington, MA 01803-5299.

Respectfully submitted,

NEW ENGLAND TRUCK MASTER

By: 

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Its Attorneys.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer and Affirmative Defenses was mailed, via certified mail, return receipt requested, and sent *via* facsimile to (404) 305-5223, on October 23, 2008 to the following counsel of record:

Andrea Michelle Harper, Esq.
Federal Aviation Administration
Office of the Regional Counsel
Southern Region
P.O. Box 20636
Atlanta, GA 30320


Michael C. Sorensen